

Appeal from a decision of the California State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease CA 147.

Affirmed.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Rentals --Oil and Gas Leases: Termination

The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2). Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease.

APPEARANCES: James H. Withycombe, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

James H. Withycombe appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated December 6, 1982, denying his

petition for reinstatement of oil and gas lease CA 147. BLM denied appellant's petition because his tardy submission of the rent for lease CA 147 was not found to be either justifiable or not due to a lack of reasonable diligence.

Lease CA 147 was issued to appellant on August 13, 1973, with an effective date of September 1, 1973. The anniversary date of this lease was, accordingly, September 1, and rent for lease CA 147 was due on or before this date each year. Appellant's rental payment was received on September 10, 1982. Appellant explains his tardy payment in this manner: "I am not a professional accountant and probably not too efficient at that. I have an open file for bills due the first of the month & another for bills due the fifteenth & the oil lease bill was somehow placed in the wrong file."

[1] An oil and gas lease on which there is no well capable of production terminates by operation of law if the annual rental payment is not received by the BLM State Office on or before the anniversary date. 30 U.S.C. § 188(b) (1976). The Secretary may reinstate a lease terminated by operation of law for failure to pay on or before the anniversary date the full amount of rental due where it is shown to the satisfaction of the Secretary that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. 30 U.S.C. § 188(c) (1976). Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. 43 CFR 3108.2-1(c)(2).

The file contains an envelope presumably used by appellant in sending his payment. The envelope bears a postmark of September 5, 1982. In a number of prior cases, this Board has held that mailing a rent payment after it is due does not constitute reasonable diligence. Southern Union Co., 60 IBLA 181 (1981); Gilbert Mark Castillo, 36 IBLA 32 (1978). This same principle is applicable in the present case.

Reinstatement may nevertheless be proper if the failure to make timely rental payment is justifiable. Untimely payment may be justifiable if proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Ralph W. M. Keating, 55 IBLA 113 (1981). Justification has been found where late payment was caused by illness of a friend, C. H. Winters, 34 IBLA 350 (1978); severe winter weather, Genevieve C. Aabye, 33 IBLA 285 (1978); injury to a key employee, David Kirkland, 19 IBLA 305 (1975); or illness of the lessee, Ada Lundgren, 17 IBLA 132 (1974). In Louis Samuel, 8 IBLA 268 (1972), this Board suggested that justification would also be found where natural disasters, such as floods or earthquakes, caused a lessee to make tardy payment. Fuel Resources Development Co., 43 IBLA 19 (1979). None of these causes appears in this case.

BLM's decision rejecting appellant's petition for reinstatement of oil and gas lease CA 147 filed pursuant to 30 U.S.C. § 188(c) (1976) must be affirmed. We note, however, that section 401 of the recently enacted Federal Oil and Gas Royalty Management Act of 1982, P.L. 97-451, 96 Stat. 2447, signed January 12, 1983, amends section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188 (1976), to afford an additional opportunity to reinstate a lease terminated by operation of law. Section 401 added the following new subsection (d)(2) to 30 U.S.C. § 188 (1976):

(2) No lease shall be reinstated under paragraph (1) of this subsection unless --

(A) with respect to any lease that terminated under subsection (b) of this section prior to enactment of the Federal Oil and Gas Royalty Management Act of 1982:

(i) the lessee tendered rental prior to enactment of such Act and the final determination that the lease terminated was made by the Secretary or a court less than three years before enactment of such Act, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after enactment of such Act, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after enactment of the Federal Oil and Gas Royalty Management Act of 1982, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of --

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

Since BLM has not yet promulgated regulations addressing what time limits shall apply under this section to leases terminated before enactment of the Act whose denial of reinstatement is upheld by the Board on behalf of the Secretary after enactment, appellant should inquire promptly at the California State Office of BLM if he wishes to avail himself of this provision. Pegasus Petroleum Corp., 71 IBLA 216 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the California State Office is affirmed.

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Anne Poindexter Lewis  
Administrative Judge

We concur:

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James L. Burski  
Administrative Judge

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R. W. Mullen  
Administrative Judge.

